

**Civil Action No. 5:17-CV-01216-CLS**

<sup>1</sup> Doc. no. 86. The January 8, 2018 order granting Capital One's motion to dismiss is doc. no. 84.

order: *Provided however*, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

28 U.S.C. § 1292(b) (first emphasis supplied, second emphasis in original).

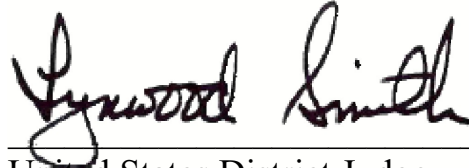
The Eleventh Circuit has characterized a § 1292(b) interlocutory appeal as a “rare exception” to the premise that the great bulk of appellate review must be conducted after final judgment [*McFarlin v. Conseco Service, LLC*, 381 F.3d 1251, 1259 (11th Cir. 2004)]. As a result, § 1292(b) should “be used only in exceptional cases where a decision of the appeal may avoid protracted and expensive litigation[,], where a question which would be dispositive of the litigation is raised[,], and there is serious doubt as to how it should be decided.” [*Id.* at 1256]. “Neither the mere lack of authority on the issue nor the claim that the district court’s ruling is incorrect constitutes a substantial ground for difference of opinion.” [*U.S., ex rel. Powell v. American InterContinental University, Inc.*, 756 F. Supp. 2d 1374, 1379 (N.D. Ga. 2010)].

*Flint Riverkeeper, Inc. v. Southern Mills, Inc.*, 261 F. Supp. 3d 1345, 1347 (M.D. Ga. 2017) (bracketed case citations supplied, other bracketed alterations in original).

Here, there is no substantial ground for difference of opinion regarding the disposition of Capital One’s motion to dismiss. As such, allowing an interlocutory appeal would delay, not advance, the ultimate termination of this litigation. Plaintiff’s contention that the court’s ruling on the motion to dismiss was incorrect is insufficient to justify an exception to the general policy of preserving appellate review until final judgment has been entered.

Plaintiff’s motion for an interlocutory appeal is DENIED.

**DONE** and **ORDERED** this 22nd day of January, 2018.

A handwritten signature in black ink, reading "Lynwood Smith". The signature is written in a cursive style with a large initial "L".

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United States District Judge